

Progress Notes

For Counselors Licensed In Washington State

Summer/Fall 2004

Malpractice & Licensing Pitfalls For Therapists*

By: Brandt Caudill, Jr.,
Esq.

Taken from Clinical Social Work Federation Newsletter—November, 2003 (This article is a condensed version of an article that appeared in the November 2003 Clinical Social Work Federation Newsletter which was developed by Brandt Caudill, Jr., Esq., a California defense attorney specializing in defending complaints against mental health professionals.)

Excessive Or Inappropriate Self Disclosure

While self disclosure is commonly used as a treatment technique, many licensing cases and civil suits allege inappropriate or excessive self disclosure. There are two keys as to whether or not a particular disclosure is ethical:

- 1) determination of how the self disclosure meets the needs of the patient and how the self disclosure meets the needs of the therapist, and
- 2) determination of whether self disclosure is likely to be therapeutic to a patient with the type of mental disorder a given patient has.

*Reprinted with
permission

As an example, where a patient has a history of child sexual abuse it could be appropriate

and ethical to disclose that the therapist has a similar background to establish a degree of empathy. On the other hand, if the patient has no such history and the therapist is disclosing the information because of the therapist's own problems, it would be inappropriate. The question should always be "how does the disclosure aid in the patient's therapy."

Business Relationships With Patients

There are numerous reported instances where therapists have entered into relationships of a business nature with present or former patients. There are very few reports of successful outcomes of such relationships. Regardless of how lucrative a potential business opportunity seems to be, a therapist must weigh whether that opportunity is worth the potential destruction of his or her career. The heart of the problem lies in the inherent unequal bargaining power between the parties once the therapeutic relationship has been established.

Unlike self disclosure, which is a common occurrence, the rule for entering into a

(Continued on Page 2)

In this issue...

- | | |
|--|---|
| 1 Malpractice & Licensing Pitfalls For Therapists | 7 Distance Supervision—What does it mean? |
| 4 2004 Exam Dates | 8 DOH Customer Service Center |
| 4 2004 Meeting Dates | 8 For Your Information |
| 5 Child Custody And Access Reports | 9 Name And/or Address Change Form |
| 5 New Rules Adopted | 11 Mental Health Counselors, Marriage And Family Therapists And Social Workers Advisory Committee |
| 5 Become An Interested Person | 11 Department Of Health Staff |
| 6 Public Workshops For Rule-Making Process Announced | 11 Please Visit Our Website |
| 6 Newsletter Contact | |
| 6 Licensed Counselor Disclosure Brochure | |
| 7 Check Your Licensing Profile | |

Malpractice & Licensing Pitfalls For Therapists

(Continued from page 1)

business relationship with a present or former patient should be “almost never.” Only after obtaining an independent consultation with an ethics expert, preferably one that is well versed in dual relationship theories, should any such relationship even be considered.

Using Therapeutic Techniques Without Proper Training

A recurrent issue over the last ten to fifteen years has been the use by therapists of treatment techniques which they are not well trained in. The therapist should not use any techniques without being thoroughly trained and experienced in them.

Using Incorrect Diagnosis Deliberately

Over the last several years as managed care has become more a part of a practicing psychotherapist’s life, there has also been a rise in allegations that therapists are deliberately reporting diagnosis to insurance companies that are not accurate to trigger coverage where it should not exist. The general rule is that the diagnosis for treatment and diagnosis for insurance should be the same. The law does not recognize or permit the therapist to have one diagnosis for treatment purposes and one diagnosis for billing or insurance purposes.

Avoiding The Medical Model

Faced with the complexities of informed consent, standard of care, note taking, etc., some therapists have tried to opt out of these requirements by simply taking the position that they do not believe in, or endorse the medical model, and therefore they should not be held to it. This has the same effectiveness as reporting to the Internal Revenue service that you do not believe that the tax laws are valid, and that you should not have to comply with them. The medical model will generally be imposed with or without your agreement.

The True Love Exception For Sexual Relationships

Over the years some therapists have sought to invoke the “true love” exception to actions for damages or by licensing boards arising from sexual relationships with present or former patients. There is no true love exception, there never has been a true love exception, and, in all probability, there never will be a true love exception. Sexual relationships with existing or former patients are unethical under most associations’ ethical principles (including CSWF), illegal in some states such as California, and can have career killing consequences. It is almost axiomatic that what is seen as true love at the time the relationship begins, is seen as mishandling of transference after the relationship ends.

Inadequate Notes

A continuing issue has been the failure of therapists to take accurate notes and, in some cases, any notes at all. While some experts may still say that there is a wide variance in the practice of therapists over keeping notes, the practical fact is that notes are essential for survival in this litigious age (except in states like Washington, where a signed acknowledgment by the patient that he or she accepts the therapist’s intention to not take notes is legal). Notes should not only be accurate, but should be meaningful in terms of content. The notes should indicate what was said by the patient, as precisely as possible, and what the therapist did or said about the patient’s communication. It is not necessary that the notes be written in plain English, but the notes should be an accurate picture of what was discussed.

It should be a red flag to a therapist if a patient *requests* notes not be taken. Such a request from a patient has many diagnostic and treatment implications and should be explored thoroughly. It is hard to imagine a clinical scenario where such action would be therapeutic.

(Continued on Page 3)

Malpractice & Licensing Pitfalls For Therapists

(Continued from page 2)

Documentation is a crucial activity and should include a record of what happens in the therapy; supervision and/or peer consultation; any contact with the patient outside the office (except for phone contact) and the reasoning behind such contact.

Failure To Obtain An Adequate History

A related issue to failure to take notes is the failure to obtain an adequate history. It is a common practice for licensing boards and civil plaintiffs to focus on the patient's history as the basis for considering the accuracy of the diagnosis. The assertion that a therapist failed to obtain an adequate history is a common one, and in some instances is justified. However, as a general matter, a history should include what the presenting symptoms are and whether they have occurred in the past; how long the presenting symptoms have lasted; what prior therapy/medication the patient has received for emotional disorders; what the history of mental illness is in the patients family of origin/current family; the quality of relationships which have been most emotionally meaningful to the patient; what physical conditions the patient has currently or has had in the past, especially those that relate to the presenting symptoms; patient's educational history; patient's marital/parental status; patient's work history; and whether the patient has had any recent physical/medical examination.

Uncritically Accepting What A Patient Says

An expert in civil litigation and for licensing boards, Dr. Jeffrey Younggren, has commented that therapists, in addition to being required to comply with the standard of care, must utilize common sense in weighing what patients tell them. The various cases that have dealt with repressed memory issues have articulated what amounts to a duty to utilize common sense or critical judgment, or a duty to be skeptical of a patient's implausible memories. Part of therapeutic judgment

includes considering the reality of a patient's communications, especially if they include a request for support for patient feelings and real actions toward others.

Use Of Inappropriate Syndrome Testimony

As early as September of 1989, Dr. Gary Melton and Susan Limber in an article entitled "Psychologists' Involvement in Cases of Child Maltreatment" [American Psychologist Vol. 44, No. 9, pp. 1225-1233] commented on the inappropriate use by therapists of syndromes that are not found in the various versions of Diagnosis and Statistical Manual. There has been a proliferation of such syndromes over the last several years. At this point using syndromes which are not appropriately researched or acknowledged by the profession is below the standard of care. Among the syndromes which are not in DSM-IV, are controversial, and which are not accepted in the therapeutic community are Child Sexual Abuse Accommodation Syndrome, Parental Alienation Syndrome, False Memory Syndrome, and Malicious Mother Syndrome.

Out Of The Office Contact

As a general rule, unless there is a specific therapeutic purpose for it, patients should only be seen in the therapist's office. While it can be appropriate to see a patient in a setting outside the office for a therapeutic reason, such instances are extremely rare and reasons should be well documented in the file. If an out of the office contact is going to occur, the therapist should document in advance what the purpose is and what is hoped to be achieved. Once the out of the office contact has occurred, the therapist should document what actually took place, and how the perceived goals were met or not met. It would be sound practice to obtain a peer consultation prior to an out of the office session (out of office contact does not include landline phone contact, but may include email contact).

(Continued on Page 4)

Malpractice & Licensing Pitfalls For Therapists

(Continued from page 3)

Failure To Obtain Peer Consultation

One of the most common failings of many psychotherapists is not having a regular peer consultant or consultation group from which to obtain feedback. The progressive isolation of therapists due to economic factors has created the potential for the erosion of clinical judgment. Peer consultation can be the most efficacious way to avoid this pitfall. Of course, if a therapist obtains a peer consultation and acts in the diametric opposite fashion

of what the consultant recommends, there can be potential serious consequences. Whenever consultations are obtained they should, of course, be well documented. One of the areas that is frequently looked at by experts reviewing cases to determine whether a therapist complied with the standard of care, is whether peer consultations were pursued and complied with.

If you would like a complete version of this article, please contact Hyon Yi at hyon.yi@doh.wa.gov. ●

2004 Examination Schedules

Licensed Mental Health Counselor:

Test Date: April 24, 2004
Application and Fee Due: January 24, 2004
Supporting Documents Due: February 24, 2004

Test Date: July 24, 2004
Application and Fee Due: April 23, 2004
Supporting Documents Due: May 24, 2004

Test Date: October 23, 2004
Application and Fee Due: July 23, 2004
Supporting Documents Due: August 23, 2004

Licensed Marriage And Family Therapy:

Test Date: January 19, 2004–February 14, 2004
Application, Fee and Documents Due: October 15, 2003

Test Date: May 17, 2004–June 12, 2004
Application, Fee and Documents Due: February 7, 2004

Test Date September 13, 2004–October 9, 2004
Application, Fee and Documents Due: June 1, 2004

2004 Meeting Dates

June 11, 2004	Kent	Department of Health 20435–72 nd Avenue S. Kent WA
August 20, 2004	Tumwater	Department of Health Point Plaza East (152 & 153) 310 Israel Road SE Tumwater WA
October 15, 2004	Kent	Department of Health 20435–72 nd Avenue S. Kent WA ●

Child Custody And Access Reports DRAFT Policy On Complaint Process

The Department may not commence an investigation into a complaint regarding the conduct of a licensed counselor involved in a custody/access dispute when:

- A) The complaint relates only to a custody/access assessment or report prepared by the Licensed Counselor to resolve a custody/access dispute between contesting parents in court proceedings or otherwise; and
- B) The complaint is made prior to the final resolution of the custody/access dispute by either an agreement between the contesting parents or by a court order.

Unless one or more of the following situations apply (includes, but is not limited to):

- A) A court has found that the custody/access assessment of the Licensed Counselor was biased, negligently performed or otherwise improperly conducted;

- B) The complaint relates to an allegation that the Licensed Counselor failed to provide services for which the licensed counselor charged a fee;
- C) The complaint relates to the conduct or acts of the Licensed Counselor outside the proper scope of a custody/access assessment;
- D) A review of the custody/access report or assessment reveals potential malpractice, including negligence or bias on the part of the Licensed Counselor, or the complaint contains credible documented evidence of such potential malpractice.

Questions or comments regarding this DRAFT policy? Please contact Traci Black at traci.black@doh.wa.gov. The Department will accept input on this policy until October 15, 2004. ●

New Rules Adopted

The following rules have been adopted effective March 22, 2004:

Disclosure:

WAC 246-809-700 Client disclosure information

WAC 246-809-710 Required disclosure information

WAC 246-809-720 Failure to provide client disclosure information

Continuing Education:

WAC 246-809-610 What courses are acceptable?

WAC 246-809-620 What are industry-recognized local, state, national, international organizations or institutions of higher learning?

WAC 246-809-630 How many hours do I need and in what time period?

For a complete copy of the newly adopted WAC's, please contact our Customer Service Center at (360) 236-4700. ●

Become An Interested Person...

If you would like to be included in our interested persons mailing list, please contact Hyon Yi at hyon.yi@doh.wa.gov.

Information that is distributed includes: Meeting agendas and minutes, rule workshop announcements, policy development and other information relating to the profession. ●

Licensed Counselor Disclosure Brochure

WAC 246-809-700 states that all licensees must provide disclosure information to each client in accordance with chapter 18.225 RCW. Previously, the Department of Health published a brochure for the education and assistance of the public. This brochure was made available by the Department to all certified counselors as an addendum to the disclosure information they are required to provide to every client. The brochure available from the Department is outdated, generic and has not been updated since licensure became effective.

The Department of Health is in the process of creating a new disclosure brochure. The goal is to create a brochure that is educational and reader friendly. The target audience for the brochure is very diverse. The clients who receive counseling services vary substantially and can range anywhere from vulnerable adults to highly educated professionals. Clients also include children, adolescents and adults.

The intent of the disclosure brochure is to provide basic knowledge about the different types of counselors, counseling services available in Washington State and client rights. There are several different counseling credentials in Washington. These credentials require different education as well as clinical experience. An informed client is better able to determine the level of services they require.

Some of the interested participants for this project may include: Licensed Marriage and Family Therapists, Licensed Social Workers, Licensed Mental Health Counselors, Registered Counselors and possibly Licensed Psychologists.

If you have suggestions for information that could be included in this brochure, please contact:

Traci Black at traci.black@doh.wa.gov. The Department will accept input for this topic until October 15, 2004. ●

Public Workshops For Rule-Making Process Announced

The Department of Health, Licensed Counselor's Program, would like input from the public, licensees and other interested parties regarding Licensed Counselor Retired Active Status, Record Retention, Education Program Approval and Content, and Sexual Misconduct.

The Department will be holding work group meetings to provide the opportunity for public input. The public and licensees are invited to attend any or all of these workshops. If you are interested in participating but are unable

to attend one of the workshops, please submit written comments to:

Traci Black, Program Manager
P.O. Box 47869
Olympia, WA 98504-7869

Email: traci.black@doh.wa.gov

FAX: (360) 236-4918

To access information regarding dates and locations of the public meetings and/or rule writing information, please view our website at www.doh.wa.gov. ●

Newsletter Contact

If you have any suggestions, ideas or comments regarding this newsletter or the information contained in it, please contact Traci Black at traci.black@doh.wa.gov.

This newsletter will be produced on an as needed basis. The Summer/Fall 2004 issue is the only issue that will be mailed out to all

licensees—additional issues will be posted on the web. Prior to the final development of any future issues, a postcard will be sent to all licensees and interested persons announcing when the next newsletter will be available to view on our website. ●

Check Your Licensing Profile

Visit the Provider Lookup website at (<https://fortress.wa.gov/doh/hpqa1/Application/CredentialSearch/profile.asp>) or access it through the Department's website at: www.doh.wa.gov.

Overview

The Health Professions Quality Assurance Division launched a web site that provides easy access to information on the 270,000 health care professionals in the state. The web site provides the health care provider's birth year and license status, including any current restrictions or disciplinary actions.

If action has been taken against a health care professional since July 1998, the web site will allow visitors to review and print copies of legal documents.

Even partial entries will result in a listing of health care professionals to choose from. If a practitioner has more than one credential to practice in Washington, that information will be shown.

Information available on the site:

- Birth year
- Credential Number
- Type of credential(s)

- Whether the health care professional's license is active, deceased, expired, inactive, military, revoked, suspended, unlicensed or retired
- The date when they first became credentialed
- Expiration date of credential
- Last renewal date
- Restrictions or disciplinary actions
- Copies of legal documents issued after July 1998

Information not available on the site:

- If there are restrictions or disciplinary actions prior to 1998
- Complaints that do not result in disciplinary action
- Malpractice settlements and criminal convictions
- A health care provider's residential address
- Specialty information
- Practitioner referrals
- Information protected by law. ●

Distance Supervision—What does it mean?

The Department of Health is in the process of soliciting input for an interpretive statement of WAC 246-809-320 Social Work Education Requirements and Supervised Postgraduate Experience. Specifically, the Department is interested in developing an interpretation of the term "distance supervision" to assist candidates who are acquiring their postgraduate supervised work experience. If you have

any suggestions or comments, please submit them by October 15, 2004 to:

Traci Black, Program Manager
Department of Health
P.O. Box 47869
Olympia WA 98504-7869

Traci.black@doh.wa.gov ●

Department Of Health Customer Service Center

Please call our customer service center at (360) 236-4700 for the following services:

Application Packets—Application packets for first time licensure for all health professions.

Verifications—Processing of verifications for all professions; telephone, written or electronic.

Name/Address Changes—Address changes may be made via a telephone call, however, in accordance with WAC 246-12, name changes must be in writing with appropriate documentation.

Renewal Processing—Renewal processing for all health professions. ●

For Your Information

Examinations For Licensed Counselors:

RCW 18.225.110 Examinations (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for licensure shall be scheduled for the next examination following the filing of the application.

The Department has interpreted this to mean that an individual cannot take an examination for a license they do not qualify for and/or have not applied and for which all the requirements are not completed.

Pre-Approval of Continuing Education Courses:

The Department of Health *does not* pre-approve courses for continuing education nor does the Department approve presenters of continuing education.

WAC 246-809-610 and WAC 246-809-620 define what courses are acceptable and who an industry recognized organization is that can approve continuing education courses. Please refer to the WAC for a list of organizations who can approve continuing education courses.

Speakers Available:

Department of Health staff members are available for group or organization meetings to discuss licensing requirements and the responsibilities and activities of the program. For more information contact:

Traci Black, Program Manager
(360) 236-4917

Address Changes:

Remember to keep the Department of Health informed of any address changes to ensure that your license record is correct and up-to-date. Changes must be submitted in writing to the following address:

Department of Health
Customer Service Center
P.O. Box 47865
Olympia WA 98504-7865

License Documents:

Upon first licensure and/or subsequent renewal of your license, the Department of Health will issue a paper document that is your original license. This document is approximately 8 x 4 and includes a smaller version for your wallet.

The Department no longer issues wall certifications for the licensed counselor professions. For those of you who were certified you may remember those nice looking 8-1/2 x 11 documents that included the Seal of the State of Washington.

Due to workload and the expense incurred to produce the certifications, we can no longer provide them.

Committee Members Needed:

Interested in becoming a committee member? We are always seeking interested persons to submit applications for vacancies on the committee. If you are interested, please contact Hyon Yi at hyon.yi@doh.wa.gov for more information. ●



Practitioners are required by law to keep the Department of Health informed of any change in their name or address. This will ensure receipt of the renewal notice and other timely information.

Name and/or Address Change Form

(Please type or print in ink)

License # _____ Social Security # _____

☐ Mental Health Counselor ☐ Marriage and Family Therapist ☐ Social Worker

Old Information:

Name _____

Address _____

Changes:

Name _____

Address _____

*A change in name must be accompanied by a photocopy of the marriage certificate, a divorce decree, or a court-ordered name change (whichever is applicable).

Effective Date _____ Signature _____

A licensee's address is open to public disclosure under circumstances defined in law, RCW 42.17. The address the Department has on file for you is used for all mailings, renewal notification and public disclosure.

Mail this completed form:

Department of Health
Licensed Counselors
P.O. Box 47865
Olympia, WA 98504-7865
Attention: Address/Name Change ●



Fold Here

First
Class
Postage

**MENTAL HEALTH COUNSELORS, MARRIAGE
AND FAMILY THERAPISTS AND SOCIAL
WORKERS ADVISORY COMMITTEE
CUSTOMER SERVICE CENTER
P.O. BOX 47865
OLYMPIA, WA 98504-7865**

Fold Here

Tape Here

Mental Health Counselors, Marriage And Family Therapists And Social Workers Advisory Committee

Member Term Expiration

Lisa Erickson, Chair	7/22/05	Licensed Mental Health Counselor
Alison Hadley	7/22/04	Licensed Advanced Social Worker/ Licensed Independent Clinical Social Worker
Vacant		Licensed Independent Clinical Social Worker
Bethel Pittman	7/22/06	Public Member
Cheryl Storm	7/22/05	Licensed Marriage & Family Therapist
Susan Bogni	7/22/04	Public Member
Joyce Gaidies	7/22/05	Public Member
Judy Roberts	7/22/06	Licensed Mental Health Counselor ●

Department Of Health Staff

Traci Black, Program Manager	(360) 236-4917	traci.black@doh.wa.gov
Robert Nicoloff, Executive Director	(360) 236-4924	bob.nicoloff@doh.wa.gov
Kitty Slater, Program Manager	(360) 236-4925	kitty.slater@doh.wa.gov
Hyon Yi, Office Assistant	(360) 236-4923	hyon.yi@doh.wa.gov
Customer Service Center	(360) 236-4700	hpqa.csc@doh.wa.gov ●

Please Visit Our Websites

Marriage And Family Therapy:

https://fortress.wa.gov/doh/hpqa1/hps7/marriage_family_therapist/default.htm

Mental Health:

https://fortress.wa.gov/doh/hpqa1/hps7/mental_health_counselor/default.htm

Social Work:

https://fortress.wa.gov/doh/hpqa1/hps7/social_worker/default.htm

All profession sites may be reached through the Department's website at:

www.doh.wa.gov ●



Licensed Counselors

Department of Health

310 Israel Road SE

Tumwater, WA 98501

P.O. Box 47869

Olympia, WA 98504-7869

PRSR1 STD
U.S. POSTAGE PAID
Washington State
Department of Printing

Visit us at our web sites:

https://fortress.wa.gov/doh/hpqal/hps7/Marriage_Family_Therapist/default.htm

https://fortress.wa.gov/doh/hpqal/hps7/Mental_Health_Counselor/default.htm

https://fortress.wa.gov/doh/hpqal/hps7/Social_Worker/default.htm